IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 206 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMBALAL HATHIBHAI VAGHLA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 206 of 1995

MR KB PANDE for Petitioner No. 1

MR SJ DAVE, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/03/2003

ORAL JUDGEMENT

This is a revision application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short, "the Code") challenging an order dated

25/05/95 recorded by the learned Additional Sessions Judge, Kheda at Nadiad in Criminal Misc. Application No. 499/95 under which the learned Judge dismissed the said application of the petitioners for regular bail, in respect of offences punishable under the Narcotics Drugs and Psychotropic Substances Act, 1985 registered against them.

2. The short facts before the trial court was that the said application was submitted by the present petitioners for their bail under Section 167(2) of the said Code stating that the chargesheet was not filed within the stipulated period. There was no dispute about the same. But, it seems that after filing the application for bail, the chargesheet was filed by the investigating police officer. The trial court took a view that since the chargesheet was filed during the pendency of the said application there is no right vested in the petitioners to get enlarged on bail. Therefore, the said application was dismissed.

3. Now, it is well settled that even if the chargesheet is filed during the pendency of application, the accused will get a right to be enlarged on bail. If the chargesheet is filed beyond the period of limitation stipulated, then also, the accused will get a right to be enlarged on bail, under subsection 2 of Section 167 of the said Code. This aspect has not been properly considered by the learned Judge. Therefore, the order in question is ex-facie illegal. This is more so in view of the recent trend of this Court and of the Hon'ble The Supreme Court.

4. It is required to be considered that in Ambalal Hathibhai Vaghela Vs. State of Gujarat, the Hon'ble the Supreme Court in SLP (Cri.) 605 of 1995 was pleased to observe on 10/05/95 that in view of the judgment dated 01/05/95 in Criminal Appeal No. 611 and 622 of 1995 and in 298 and 299 of 1995 (Union of India Vs. Thamisharasi & Ors.) of the Hon'ble the Supreme Court, it was required to be held that the proviso to subsection (2) of Section 167 of the Code can be invoked by the accused arrested for the commission of an offence under the N.D.P.S. Act, 1985.

5. In Uday Mohanlal Acharya Vs. State of Maharashtra reported in 2001(2) GLR, 1148 it has been decided by the Hon'ble the Supreme Court that the right of the accused to be released on bail when chargesheet is not filed within the stipulated period is an indefeasible right and the accused can be said to have availed of this

right when he files application for bail. Therefore, the right will not be defeated when chargesheet is filed during pendency of such application. Therefore, subsequent submission of chargesheet pending application for bail under subsection 2 of Section 167 of the Code will not benefit the State.

6. In that view of the matter the order passed by the trial court rejecting the said bail application is not legal and therefore, it is necessary for this Court to interfere by exercising revisional jurisdiction.

7. For the foregoing reasons, this revision application is allowed. The order dated 25/05/95 recorded by the learned trial Judge in Criminal Misc. Application No. 499/95 is ordered to be set aside. The petitioners are ordered to be enlarged on bail, on their furnishing solvent surety and PR in a sum of Rupees Fifteen Thousand Each to the satisfaction of the trial court, on condition that the petitioners shall remain present before the said Court, as and when so required, by the said court and that they shall not leave the State of Gujarat without the prior permission of the trial court. Rule is made absolute.

(D. P. Buch, J.)

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